

June 3, 2008

**OFFICE OF THE HEARING EXAMINER
CITY OF RENTON**

REPORT AND DECISION

APPELLANTS:

Pegi Galster
2907 Mt. View Avenue N
Renton, WA 98056

Joan Rosling
1023 N 34th Street
Renton, WA 98056

RESPONDENT:

Charles F. Conner
3001 Mt. View Avenue N
Renton, WA 98056

John Hempelmann
Attorney for Mr. Conner
524- 2nd Avenue
Seattle, WA

Ann Nielsen, Assistant City Attorney
City of Renton

File No.: LUA 07-097

LOCATION:

3001 Mt. View Avenue N

SUMMARY OF APPEAL:

Appeal of Temporary Use Permit

PUBLIC HEARING:

After reviewing the Appellants' written requests for a hearing and examining available information on file, the Examiner conducted a public hearing on the subject as follows:

MINUTES

***The following minutes are a summary of the May 6, 2008 hearing.
The legal record is recorded on CD.***

The hearing opened on Tuesday, May 6, 2008, at 1:35 p.m.. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

Parties present:

Pegi Galster, Appellant
Joan Rosling, Appellant
Charles Conner, Respondent
John Hempelmann, Attorney for Mr. Conner and Ms. Simpson
Ann Nielsen, Assistant City Attorney for City of Renton

The following exhibits were entered into the record:

<u>Exhibit No. 1:</u> Yellow File for LUA 07-097, containing the original application, various reports, correspondence file, and Staff analysis.	<u>Exhibit No. 2:</u> Yellow file, LUA-08-004 ECF, by reference for the SEPA Appeal
<u>Exhibit No. 3:</u> Large Map of the area in question	<u>Exhibit No. 4:</u> Small Zoning Map
<u>Exhibit No. 5:</u> Aerial Photograph of the Conner Site	<u>Exhibit No. 6:</u> Noise Codes
<u>Exhibit No. 7:</u> High Velocity Curve drawing	<u>Exhibit No. 8:</u> Picture of Helicopter similar to Mr. Conner's.
<u>Exhibit No. 9:</u> Petition with signatures of supporters on Mt. View Avenue North	<u>Exhibit No. 10:</u> Flyer "Your Voice Is Needed" regarding helicopters flying in the Kennydale area
<u>Exhibit No. 11:</u> Aerial views of the Site	<u>Exhibit No. 12:</u> Waterside View of Subject Site, Fix property and a treed lot.

Mr. Hempelmann asked to move to dismiss the appeal of Joan Rosling, he did not believe that she had standing to be in the hearing as an appellant. She has already testified as a member of the public and could do so again. The criteria stated in the Temporary Use Permit refers to detriment or injury to surrounding uses or property and also nuisance to surrounding property. The map (Ex. 3) shows the site of the TUP of Mr. Conner's helicopter, there is a circle of 1,000 feet in radius, further note that Mrs. Rosling lives approximately 2,000 feet away from the site. Her property does not appear to be a surrounding use and is not in the vicinity.

Ann Nielsen stated that the City would join in that motion.

The Examiner stated that he was reluctant to find no standing, one cannot tell from the map whether she would be injured or not. He will not dismiss at this point.

Joan Rosling stated the Mr. Conner built an illegal heliport without a proper permit. When the City was apprised of the fact that there was a helicopter flying in and out of a private home on Lake Washington, it should have stopped the activity immediately and preceded with the impact studies that are required by code and the Master Shoreline Management program. The City did not do this and instead issued Mr. Conner a Temporary Use Permit.

The City's rationale was that the residents on the lake are allowed seaplanes for personal and recreational use and so helicopters should be allowed as well. This is not Mr. Conner's personal helicopter, it is registered under Conner Homes, Inc. and is used for business purposes, not recreational.

They have been trying to have this hearing since last October, every time a date was set Mr. Hempelmann came up with a conflict. These delays have allowed Mr. Conner to fly around the neighborhood and over their homes. She has seen him flying low over Kennydale Hill to land his helicopter at his home. She can hear him flying up the channel while inside her home.

The Master Shoreline Program states that a 25-foot buffer zone must be maintained in natural vegetation in order to protect the lake from hazardous materials. The City has turned a blind eye and ignored this regulation by allowing Mr. Conner to construct and maintain his landing pad within the buffer zone without the proper permit. Should there be an oil or gas spill from this helicopter, it would go directly into the lake, as there is no containment to prevent this from happening.

She requested that the Temporary Use Permit be reversed immediately. No noise impact statement has been conducted from her house even though she has seen the helicopter coming in over the Kennydale Hill quite a few times.

Mrs. Galster stated that her husband was at sea and unable to attend the hearing today, therefore, she is reading a statement that they prepared for today. It is their belief that the Temporary Use Permit was granted erroneously for the following reasons; RMC 4-9-248 was quoted. There is nothing in the public record that indicates an onsite investigation was undertaken or that data specific to this site and the proposed use were gathered and analyzed. The public record contains primarily non-expert input and the City of Renton environmental and development application review sheets. There is no back up documentation to suggest that the decision criteria listed were researched in any appropriate manner to an unprecedented development. If the use and compatibility were studied by the City for the use and operation of a helipad on the shoreline as required, there is no detailed or specific evidence of such in the file or public record. For the purposes of this appeal, it must be deemed to not exist. In a letter dated September 28, 2000 to parties of record from the Planning, Building and Public Works Department approving the Temporary Use Permit, one of the justifications cited for approving the permit states that the City of Renton Municipal Code does not currently address the specific use of a private heliport in any zone within the City. RMC 4-3-090 allows private seaplanes bases, and a single private seaplane is allowed per residence. In making this determination the City failed to take note of the fact that by regulation the seaplane would be more similar to a boat.

A helicopter taking off from the shore is much closer in proximity to land and homes than a seaplane or floatplane is allowed to be. The restrictions on seaplanes obviously stem from the noise and safety restrictions. The only indicator in the record that noise was researched in any way is an e-mail, which notes various decibel levels for various types of machinery. There is no indication that a distinction was made between a helicopter about to takeoff at the shoreline and a seaplane doing the same at a regulated distance off the shoreline. The sole research done into the noise levels prior to issuing the permit found that the median range of the decibel levels of helicopters is indeed higher than that of a seaplane or floatplane.

One city does require a helicopter to land and takeoff from an offshore platform a distance away from people, homes and property rather than on the shoreline.

The September 28, 2000 letter further states that the landing pad consists of a portion of the existing driveway. No construction has been proposed. There is no requested permit for development or construction associated with this Temporary Use Permit. Subsequently no fill or excavation, tree removal or construction will take place. The only request is for a pre-existing area on the property to be used as a heliport. The Temporary Use Permit allows for a privately owned helicopter to land and takeoff from an existing concrete paved area. The City seems to have placed a considerable amount of weight on a proposed pre-existing nature of the helipad and at the same time indicates that the City's understanding of events leading up to submittal of the permit application was substantially in error. The application was filed after the completion and operation of a new home on the property in question. This construction included a landing pad and hanger, the later an integral part of the residence. By all reasonable appearance, this was intended for use by a helicopter situated on a portion of the lot immediately adjacent to the shoreline where no structure or hard surface had previously been established. This can clearly be seen in pre-construction photographs. The City has confirmed that the helipad does encroach on Class 1 shoreline and significant buffer zones.

The applicant applied for and received on July 28, 2006 a certificate of exemption from the shoreline substantial development permit for repairs and maintenance to the existing gazebo and bulkhead. There was no record of any such certificate for the newly constructed helipad. The City appears to have failed to note discrepancies and the available public record appears to indicate that the requirements of the shoreline master plan for new construction within the buffer zone. The Temporary Use Permit should be revoked as the application omits a

substantial and relevant fact and the failure to correctly apply the Shoreline Master Plan is a detriment to public welfare, which the City failed to note. 5) The appellant himself notes the appropriateness of environmental review. In an e-mail to Erika Conkling, Mr. Conner states that the concern of the Muckleshoots is with the construction or clearing for a helipad rather than simply landing on an existing surface. That project would require environmental review and since the revision is simply zoning their concerns don't appear relevant until such time as someone does propose a clearing or a construction project. Jennifer Henning, current planning manager, stated that the applicant failed to disclose that he was building a helipad and showed that area on the plans as a driveway. Accordingly, they believe this permit should be revoked.

Ann Nielsen stated that Jennifer Henning would be giving a presentation that addresses some of the allegations that were raised by both appellants. When the TUP was issued, the City incorporated and contemplated the decision criteria that are set forth in sub 8, Ms. Henning will go over each and every one of those provisions.

Jennifer Henning, Current Planning Manager stated that the project site is located at 3001 Mountain View Avenue N. A portion of the property is actually located within the lake. She will be talking about the half-acre part of the site that is the upland portion of the site and is 24,800 square feet in size with approximately 118-feet of shoreline with a depth of approximately 210-feet. The project is located in the R-8 zone.

On August 30, 2007 Mr. Conner applied for a Temporary Use Permit with the City of Renton in order to land and takeoff from his private residence with a helicopter. On September 7 the application was accepted as complete, which commenced a 14-day comment period. The application was triggered by a phone call requesting the permitted hours of operation for a helicopter in an R-8 zone. Helicopters were not allowed as a permitted use in the R-8 zone and the Code Compliance group contacted Mr. Conner and informed him that they had received a complaint and asked him to cease flying his helicopter until such time as he could obtain the necessary permits.

The R-8 zone has no indications for helipads. The zoning tables show the boxes blank within all residential zones with allowance for helipads within industrial and commercial zones subject to Hearing Examiner Conditional Use.

It was never anticipated that a helicopter might be used in a residential zone, the code did not address that issue. It was suggested to Mr. Conner that the only way he could legally operate a helicopter in a residential zone at this time would be to obtain a Temporary Use Permit, which allows a short term use while he sought a code change. The Temporary Use Permit requires posting of public notice in three locations on or near the property. The 14-day appeal period commenced on September 7 and concluded on September 21, they received comments via e-mail and letter. There was a total of 63 responses, 55 were in support of the application and 8 opposed. One of the opposed did contact the City and asked to be changed to a supporter of the application. A map was shown of the subject property and adjacent properties.

A Temporary Use Permit can be issued when unanticipated things take place, when stores are renovating and they need to bring in large container boxes for storage on site, a staging area for construction sites, or for weekend car sales. Some of the criteria looked at were that the temporary use would not be detrimental to the public health, safety or welfare, or injurious to property or improvements in the vicinity. There were no reports of air incidents or accidents in or around the area. The applicant stated that the use was infrequent and mainly during daylight hours. The use was limited, he had contacted his neighbors and discussed the use that was ongoing. It appeared to be unnecessary to condition the hours of operation because of the pattern of his use.

They also look at any nuisance factors such as noise, light, glare that would impact surrounding uses. Some nuisance factors already present included the railroad tracks, boats, jet skis, and other watercraft uses on the water, and flyovers from jets. The proposed use of the helicopter on this site seemed to be very short termed, in

the fact that there would only be a couple of minutes that the helicopter would be taking off and landing. No sound tests were done. Noise allowed are sounds of aircraft in flight and sounds that originate at airports directly related to flight operations. Aircraft are also not considered to be a motor vehicle. The most restrictive sound limits are one and a half minutes in any one-hour period and that runs during the hours of 10:00 pm and 7:00 am. Mr. Conner stated that he has never flown past 8:00 pm, normally he only flies during daylight hours.

In residential areas the source of the noise is limited to 55 decibels at any hour of the day or night, the noise may exceed 5 decibels for no more than 15 minutes in any one-hour period, or 10 decibels for 5 minutes in any one-hour period, or 15 decibels for 1-1/2 minutes in any one-hour period.

A shoreline exemption was issued for the demolition of the previous residence on the site and for the construction of the new residence, on April 12, 2005. The helicopter landing area is part of the patio or driveway that goes down to a garage, there was no indication of a helipad on the building plans that the City reviewed or any of the applications that were prior to this temporary use permit.

Structures are not allowed within 25-feet of the ordinary high water line. The Shoreline Master Program also regulates development. This Temporary Use Permit was not considered to be for development.

The helipad is not unlike a parking pad on any personal property and they are allowed within that shoreline setback area. The distinction is buildings/structures, not parking areas.

The Examiner asked if someone were to come in and ask for a Temporary Use Permit to land a helicopter in the Highlands, would it be granted?

Jennifer Henning stated that anyone can apply for anything, however it would be difficult, one of the factors is that on the lake there is an allowance for a seaplane at every dock along the shoreline. There is not the same provision for someone to have a private airplane in the Highlands.

On September 28, Development Services did send out a letter to the neighbors stating that they were issuing a Temporary Use Permit for the helicopter. They do not generally do that, but they felt it was a benefit to let the neighbors know what was happening in the area.

Upon questioning by Mrs. Rosling, Ms. Henning stated that when checking the record for air accidents, they were looking specifically for floatplane, seaplane type of accidents.

Mrs. Rosling stated that notices were posted on Mt. View Avenue and Ripley Lane, however no notices were posted in the Kennydale Hill area. If helicopters are going to be allowed to fly over the neighborhood, then it may be that insurance premiums would be raised.

The Examiner asked if the City considered the noise of the helicopter, an analogy was made to seaplanes or floatplanes that are allowed on the shoreline lots, but a helicopter is much closer, hovers, and then moves off. The City did not do a noise study when the Temporary Use Permit was issued.

Upon questioning by Ms. Galster, Ms. Henning stated that no timing tests were done regarding the take-off and landings of the helicopter. The site was posted and an affidavit of posting notes that it was posted in three locations on or near the property, all on Mt. View Avenue. Property owners within 300 feet were mailed a copy of the notice of application, the affidavit for that mailing is in the file as well

Upon questioning by Mr. Hempelmann, Ms. Henning stated that she was aware that when the TUP decision was made, both Ms. Fix and Mr. Marshall were supportive of the helicopter at the Conner residence. There was a letter in the file stating Ms. Fix's support and Mr. Marshall's signature was on a petition indicating support.

Many of the addresses on the petition were from Mt. View Avenue N. One of the factors in making a decision is based on the amount of support that is noted by neighbors that would be most affected by the helicopter.

Ms. Henning did review the permit prior to issue of the TUP. She further did not feel that the noise was not considered as continuous.

Charles F. Conner stated that his home was properly permitted and constructed. Sidewalks and driveways are not restricted, the helicopter is not parked in the 25-foot buffer zone for more than the few minutes it takes to roll it inside the garage. The Certificate of Occupancy was completed on February 28, 2007. He did not build a heliport, but a home with a large garage downstairs. He has a pervious driveway that allows him to drive vehicles down to the garage and a sidewalk that goes to his dock and that sidewalk is where he lands his helicopter. There are no regulations prohibiting landing a helicopter in a residential zone. On May 9, 2007 he landed on his property for the first time, from that date until October 8, 2007 when the appeals were written, he had landed there 9 times. He does not believe that he is operating a heliport. Because there is an airport close by with air traffic information, he is able to get wind information, etc for safety reasons you can read the water for wind as well. He is within the air traffic control zone, every departure or arrival is governed by the tower who has line of sight to his yard where he lands the helicopter.

The complaint was filed on June 14 and he spoke with Mrs. Galster at length on Monday, June 18. She stated that she had been awakened by his helicopter flying very close to her home at 7:00 am on a previous Sunday, he had not flown to or from his home on any day prior to 10:00 am, he has a record of every flight he makes, he suggested that it must be a case of mistaken identity. Numerous aircraft and helicopters fly by every day. His is not the first helicopter on Lake Washington, there is one directly across the lake from them since 1990. He stated several other local cities that allow helicopters without any permits.

A seaplane can taxi up a ramp, out of the water, across the lawn and into a hanger. A floatplane stays in the water. The noise from his helicopter when it takes off is much lower than some lawnmowers. The decibel level of lawnmowers is very high. The use of his helicopter is infrequent and non-repetitive. There is an exemption for aircraft in flight.

If he were based at the airport, there would be more noise, as he would be transiting from the airport to the north past his neighbors. It is unfortunate that even one neighbor is unhappy, he does have the support and petition showing support from the residents on Mt. View Avenue except Ms. Galster. He also spoke with everyone on Lake Washington Blvd during the process of applying for the permit. He wanted to alleviate all concerns. His landings and departures are exclusively over the water, he does not fly over Kenndale Hill. Once airborne, FAA rules apply, he tries to stay away from residences in general.

He went on to explain the height velocity curve, an area in which you do not fly a helicopter because an engine failure is irrecoverable. His flying is always over the water, if he were to have an engine failure he would go into the water, but he would endanger no property or people.

Upon questioning by Mr. Hempelmann, Mr. Conner stated that there are many rules and regulations by the FAA for pilots. He keeps a log for all flights in order to verify what he has done, when and where he has been in the helicopter. He uses it for business purposes as well as for pleasure. Those records must be kept separate for tax purposes. The log is maintained down to 1/10 of an hour, in 6-minute increments. Fuel is managed on flight time, he does not put full trust in the fuel gauge. A full tank is worth 2 hours and 40 minutes flight time. This log is also used for maintenance purposes. He did check the log before coming in today, he has landed 27 times at the property on Lake Washington, which is over about a 10-month period. He also made another 7 landings at the airport during that time since he has been restricted from flying from his property.

He is positive that he has not flown over Ms. Galster's home at 7:30 in the morning. There are two other helicopters in the area, one the same colors as his, which are kept at the Renton Airport. He further stated that he has not flown over that area of Kenndale Hill, he has purposely avoided that area. Sometimes he makes orbits around the Barbee Mill site between 500 and 1000 feet, he does not qualify that as Kenndale Hill.

He is concerned about others and does try to take other's needs into consideration. He told Ms. Galster that if she were having an outside party to let him know and he would make a point to not fly at that time.

The FAA conducted an aeronautical study on his application to fly his helicopter in and out of his property on Lake Washington. In his concerns for safety and making sure that he is following all rules in place, he asked the FAA to conduct this study. There is a letter in the file from the FAA approving his operations from a safety standpoint.

His helicopter has a 25-foot rotor diameter. He sets his helicopter down within inches of where he wants to put it down. He does not believe that the FAA would approve landing over the houses along the lake, he believes the safest landing and takeoffs are out over the water.

He showed a map with a 1000-foot radius line drawn, with all the people supporting the use of his helicopter marked in green, he also plotted several residents in the area who had negative comments as to what he was doing, and they are marked in red. He had spoken to several people in opposition regarding what his plans were and what he was doing. He received letters from them stating that they had been misinformed. They had seen another helicopter that had been flying low over the area, Mr. Conner told them that was not his helicopter.

If he changed the model of helicopter that he was flying, he would have to let the City know. The Temporary Use Permit is good until October 2008. If the City does not allow a Conditional Use Permit, he would lose his Temporary Use Permit.

Mr. Conner stated that there is a shortage of hanger space at Renton field, there are people waiting to get hangers.

The Examiner stated that he presumed that he did not keep fuel at his property and therefore would have to take off from his home, go to a place where he would be able to fuel up and then take off again.

Mr. Conner stated that was correct. He further wanted to state that the helicopter is parked inside, not along the shoreline.

Upon questioning by Mrs. Rosling, Mr. Conner stated that the maintenance is done typically at Renton field, sometimes he fuels from Renton field and sometimes he fuels at his home from a 55-gallon drum. He does not have any objection to using the airport, it is a fine facility and at times he does use it. The reason he does not want to base his helicopter there are many-fold, one is lack of hanger space, another is potential damage to the helicopter. His home has fire sprinklers, it's inside and weather is not a factor, there is not any other equipment there that could damage his helicopter. Similarly, he keeps his boat at home rather than a marina, it is a matter of convenience.

There is no permit required from FAA, you are required to get FAA approval if you want federal funding for a heliport. He only filed with FAA because it was a second set of eyes looking at this situation, he wanted their input and blessing for his landing area.

Upon questioning by Ms. Galster, Mr. Conner stated that the turf stone runs from the front of the house down the side and along the sidewalk/driveway toward the shoreline. There is no circular platform on his property. In

a previous conversation, he stated that a reasonable request was that 70% of his flying would be between the hours of 8:00 am and 10:00 pm.

Victoria Kapetan, 1003 N 33rd Street, Renton 98056 stated that some flyers were presented today, the top sheet was her flyer, she went doorbelling through the neighborhood in the last week. The other two pages were not her doing. She is one of the four "red" designations on the map of Kennydale Hill. She did not know any of the other "red" designated people until today. The noise must impact them the same, they are all in direct alignment to the lake.

Upon questioning by Mr. Hempelmann Ms. Kapetan stated that she did not know the times Mr. Conner flew, she had not kept track of the time.

Mrs. Galster asked questions of Ms. Kapetan who stated that she was aware of the coming and going of the helicopter, but was not sure of the amount of time she heard the noise.

Ann Simpson, 3001 Mt. View Avenue N, Renton 98056 stated she is an airline pilot with Northwest Airlines with 27 years of seniority. She currently flies as Captain on the Boeing 747-400.

Regarding the safety issues that people have mentioned, she stated that there are many rigors one must go through to become a pilot, students are required to take written as well as practical exams. Once a pilot becomes licensed, a minimum of a bi-annual check is required. Mr. Conner received his rotary wing pilot's license in 1989, he is steadfast in maintaining his proficiency and does annual training with an instructor on emergency procedures. Safety matters most to pilots.

However, accidents do occasionally happen and flying from their home puts the neighbors at less risk than if they were flying out of the Renton Airport. Mostly because they will not have a car accident while going to the airport, but also because Mr. Conner will not be flying over their homes. Takeoffs and landings are over Lake Washington, not over the Kennydale neighbors. Noise is not as inconvenient as one might think, from inside their home, 30-feet from the helicopter, a normal conversation can be continued through engine start, power up and departure. Even standing on the deck during takeoff and departure one can hear and be heard without shouting.

The vast majority of neighbors support the helicopter at the Conner home.

Robert Burr, 3013 Mt. View Avenue N, Renton 98056 stated that he lives approximately three houses north of Mr. Conner. He has listened to many different sounds on the lake, he is quite sensitive to sound. The loudest and most annoying sounds on the lake are the unmuffled boats. Next step down would be the seaplanes that take off from the Renton airport or their homes on the lake. They fly most frequently on weekends. Next down the line would be general aircraft in the flight path out of the airport, some quite loud, some not so loud. Below that is just the general noise on the water, the rest of the boats, which are not too significant.

He categorized Mr. Conner's helicopter noise levels at near the bottom of the list, just before the general noise of the lake. It is very infrequent, he hears him only once or twice a month, it takes him less than a minute to takeoff or land. The probability of him crashing into a house is very low, he always takes off directly over the lake and upon returning, comes in down the lake and lands at his house.

Peter Spouse, 3011 Mt. View Avenue N, Renton, 98056 stated that he wanted to address two issues that have been key points raised today. One is the noise and the other his personal observations of the flight patterns he has seen being used by Mr. Conner.

He works from his home, his office directly faces the Conner home and he is generally there every day. He has a direct line of sight to Mr. Conner's home. The Conner home is approximately 70-feet from his home. He can frequently see the helicopter takeoff and land. In his opinion the helicopter when taking off or landing is no louder than a lawnmower or leaf blower. When Mr. Conner takes off he flies out over the lake and turns north and goes up the channel, when he returns, he flies down the channel to his home and lands.

He felt that Mrs. Rosling might have made a case of mistaken identity when she stated that she has seen Mr. Conner's helicopter over her house. During his runs in the morning, he often sees a blue helicopter and at first thought it might belong to Mr. Conner, but when looking closer at it, he has realized that it is not Mr. Conner's. He suspects that the other helicopters are flying out of Renton Airport and flying directly across the path of the four homes in the Kennydale area that are hearing noise from helicopters.

Mrs. Galster stated that there are in fact Mr. Conner's home and three other homes that buffer Mr. Spouse from the noise of the helicopter when it takes off and lands and that the three homes on the waterfront probably absorb the noise more than Mr. Spouse.

Monica Fix, 3007 Mt. View Avenue N, Renton 98056 stated that she lives in the house to the north of Mr. Conner. She is in total support of Mr. Conner and his helicopter. She has worked for Boeing for the past 29 years, selling commercial airplanes.

She has seen him fly his helicopter six of the nine times that Mr. Conner stated he has flown from his property. It has been for recreational use and the noise is a short lived, two to three minutes and the same when he returns. More irritating to her is the sound of a neighbor using a power washer for two or more hours at a time or leaf blower that is being used for a long period of time.

Mr. Conner always flies up and over the water, she has never seen him fly over the property. Mr. Conner is very professional, he follows his checklist and performs a physical check of the helicopter before taking off. He checks the fuel and all gauges. When he lands, he logs everything to his Palm Pilot and then downloads everything to his computer. She is totally confident in what Mr. Conner is doing with the helicopter.

Mrs. Rosling stated that no noise impact studies were done, nor any independent environmental study by the City was completed before issuing this Temporary Use Permit. She asks that the permit be revoked.

Mrs. Galster stated that it probably was not 7:00 am and most likely could have been 10:00 am, her husband has just returned from sea and she had just returned home from work, it could well have been 10:00 am, but there was no mistaking that it was Mr. Conner's helicopter. They thought there might have been an accident on the lake and both of them rushed out of the house and saw Mr. Conner taking off. Noise does travel farther on the water.

Mr. Hempelmann stated that the decision of the City is presumed to be correct. The burden is on the appellants to show that the decision of the City was erroneous. There was a lot of passionate argument and some very well spoken words but very little evidence. They had no witnesses or experts. The one true expert on land use that testified today was Jennifer Henning, she was very impressive and very even handed in her analysis of the issues as she walked through what the City staff did, it was clear that all the bases were covered and all issues were addressed. There was no noise study done, there is no requirement that there be a noise study. There is a requirement that an evaluation be done on the noise, which the City did do. When looking at the noise issue, it needs to be put into context and the context is very infrequent use of the helicopter. When it is used the noise is for very short periods of time and then it is gone. There was extensive environmental studies done by the City's staff, they looked at wildlife issues and hazardous materials issues and noise and safety issues. The record supports the City's decision and Mrs. Rosling and Mrs. Galster have no proof.

Ann Nielsen stated that the City has met all the notice provisions with respect to the Temporary Use Permit. Mr. Conner went above and beyond what he was required to do under the law. Not only did the appellants not meet their burden, but Ms. Henning went to great lengths to explain and show what the City had done in considering whether the issues, made a report to Mr. Watts who signed off to approve the Temporary Use Permit. Lastly, the term heliport has been loosely used today, however it is a misnomer to call it a heliport when in fact it is a helipad for the personal use of one person's private helicopter.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 4:59 p.m.

FINDINGS, CONCLUSIONS & RECOMMENDATION

Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. Two separate appellants, Joan Rosling and Pegi DuBois Galster, each filed appeals of an Administrative Determination approving a Temporary Use Permit that allows operation of a helicopter on a residential parcel.
2. The appeals were filed in a timely manner.
3. The Temporary Use Permit was issued to Charlie Connor (hereinafter, applicant) to enable him to operate a helicopter from his residence located at 3001 Mountain View Drive North in the City of Renton.
4. The residence is located on the shoreline of Lake Washington.
5. Pegi DuBois Galster resides at 2907 Mountain View Drive North. One residential parcel separates this appellant's home from the location of the helipad.
6. Joan Rosling resides at 1023 North 34th Street. This appellant's home is approximately four (4) blocks north and one and a half blocks east of the helipad. She walks to Coulon Park from her home.
7. The City and applicant challenged the standing of appellant Rosling due to the distance of her home from the helipad.
8. The underlying applicant had been operating the helicopter at his residence for some time. The estimate is that the helicopter has been used periodically since April or May of 2007. The applicant reported two different numbers of takeoffs and landings, both 9 and 27 flights. A neighbor complained to the City about the operation of the helicopter and the City determined that a helicopter or helipad is not a permitted use on the applicant's R-8 (single family residential, 8 units per acre) zoned property. For purposes of this decision, the terms heliport, helipad and helicopter operations all refer to the small, paved area that also serves as a driveway on the subject site. The terms are not intended to describe either the size of the landing area or the intensity of use but merely to convey that a helicopter can land or takeoff in an area on the subject site that provides a clear area for helicopter operations on the subject parcel.
9. It appears that the City in enforcing the zoning prohibition on helicopter use on the subject site and discussing the helicopter operation with the applicant noted that seaplane operations are permitted by

the Shoreline Management Act at any of the R-8 zoned parcels lining the lakeshore in this vicinity. The City and applicant agreed that the applicant should apply to have the Zoning Code and the Shoreline Act amended to allow helicopters at this and other similarly situated shoreline parcels. At the same time, it was suggested that the applicant apply for a Temporary Use Permit to allow the helicopter to be operated from the subject site until the City Council either adopted or refused changes to code to allow helicopter use.

10. The appellant Rosling objected to equating helicopters with seaplanes for purposes of approving the permit. It was noted that seaplanes have to taxi away from shore before taking off. This was intended to demonstrate that there are fewer hazards to nearby homes and less noise immediately adjacent to the nearby residences or places where wildlife might be affected. The appellant also raised issues regarding hazardous materials. The appellant raised concerns about noise impacts on habitat and wildlife and particularly eagles that frequent the area noting specifically Sections 4-3-090(K)2a

K GENERAL USE REGULATIONS FOR ALL SHORELINE USES:

1. Applicability: This Section shall apply to all shoreline uses whenever applicable. Items included here will not necessarily be repeated in subsection L of this Section, Specific Use Regulations, and shall be used in the evaluation of all permits.

2. Environmental Effects:

a. Pollution and Ecological Disruption: The potential effects on water quality, water and land vegetation, water life and other wildlife (including, for example, spawning areas, migration and circulation habits, natural habitats, and feeding), soil quality and all other environmental aspects must be considered in the design plans for any activity or facility which may have detrimental effects on the environment.

b. Burden on Applicant: Applicants for permits must explain the methods that will be used to abate, avoid or otherwise control the harmful effects.

and 4-3-050(K)2 and 3:

K HABITAT CONSERVATION:

1. Applicability: The habitat conservation regulations apply to all nonexempt activities on sites containing or abutting critical habitat as classified below.

a. Critical Habitat: Critical habitats are those habitat areas, which meet any of the following criteria:

- i. Habitats associated with the documented presence of non-salmonid (see subsection L1 of this Section and RMC 4-3-090, Shoreline Master Program Regulations, for salmonid species) species proposed or listed by the Federal government or State of Washington as endangered, threatened, candidate, sensitive, monitor, or priority; and/or
- ii. Category 1 wetlands (refer to subsection M1 of this Section for classification criteria).

b. Mapping:

i. Critical habitats are identified by lists, categories and definitions of species promulgated by the Washington State Department of Fish and Wildlife (Non-game Data System

Special Animal Species) as identified in WAC 232-12-011; in the Priority Habitat and Species Program of the Washington State Department of Fish and Wildlife; or by rules and regulations adopted currently or hereafter by the U.S. Fish and Wildlife Service.

ii. Referenced inventories and maps are to be used as guides to the general location and extent of critical habitat. Critical habitat, which is identified in subsection K1a of this Section, but not shown on the referenced inventories and maps, are presumed to exist in the City and are also protected under all the provisions of this Section.

ii. The actual presence or absence of the criteria listed above, as determined by qualified professionals, shall govern the treatment of an individual building site or parcel of land requiring compliance with these regulations.

c. Performance Standards: In addition to the general standards of subsection E of this Section, the following performance standards, subsections K2 to K5 of this Section, apply to all non-exempt activities on sites containing critical habitat areas per subsection K1a of this Section.

2. Habitat Assessment Required: Based upon subsection K1 of this Section, Applicability, the City shall require a habitat/wildlife assessment for activities that are located within or abutting a critical habitat, or that are adjacent to a critical habitat, and have the potential to significantly impact a critical habitat. The assessment shall determine the extent, function and value of the critical habitat and potential for impacts and mitigation consistent with report requirements in RMC 4-8-120D. In cases where a proposal is not likely to significantly impact the critical habitat and there is sufficient information to determine the effects of a proposal, an applicant may request that this report be waived by the Department Administrator in accordance with subsection D4b of this Section.

3. Bald Eagle Habitat: Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292).

11. Appellant Galster objected to the creation of the helipad's concrete area. She claimed it was constructed without proper permit approval or improperly allowed since helipads are not permitted in the area. It appears that permit information for the helicopter landing area is not available any longer. It is also not clear that any special permits were necessary if this is just an expanded driveway area that also serves for helicopter operations. Apparently, no special facilities exist to handle hazardous materials, if in fact 55-gallon drums of fuel are stored or used on the site, nor at this juncture is it clear if any special precautions are necessary. It is also not clear if special construction was necessary to allow storage of a helicopter in any indoor portion of the single-family residence. This appellant also raised the restrictions on where seaplanes may speed up for takeoffs. She objected to the additional noise it would introduce and noted the proximity of the helipad to her residence, one home removed to the south. She suggested that analogizing to seaplanes should be fully done in reference to where they can land and takeoff and not just solely to their being permitted by Section 4-3-090(L)1.b:

L SPECIFIC USE REGULATIONS:

1. Airports and Seaplane Bases:

- a. Airport Location: A new airport shall not be allowed to locate within

the shoreline. However, an airport already located within a shoreline shall be permitted to upgrade and expand its facilities provided such upgrading and expansion would not have a detrimental effect on the shoreline.

b. Location of Seaplane Bases:

- i. Private Seaplane Bases: A single private seaplane is permitted per residence.
- ii. Commercial Seaplane Bases: New commercial seaplane bases may be allowed in industrial areas provided such bases are not contiguous to residential areas.

She noted that Mercer Island treated a helicopter similar to seaplanes and required the helicopter to be on a dock out in the lake and not directly on the shoreline.

- 12. It was noted that seaplanes are governed by watercraft rules, which limit their speed until a certain distance from shore, meaning that they cannot become airborne near or over residences. It was also noted that there is no special limit on revving seaplane engines while on shore although such activity would be governed by other noise ordinances.
- 13. The applicant indicated that refueling occurs at airport locations but also noted that a 55-gallon drum of fuel was also available. As noted above, it is not clear that appropriate measures were or are in place for storage and use of aviation fuel in this location.
- 14. During the time this matter has been pending, the City has separately reviewed a proposed text amendment that would permit helipads to be located along the shoreline and at the subject site. The text amendment would allow such use subject to a public hearing on a Hearing Examiner Conditional Use Permit. This change would mirror the other situations where helipads are permitted in IL, IM, IH, CA, CO, COR, UC-N2 Zones of the City, by Hearing Examiner Conditional Use. At this time all helipads require a public hearing and review by the Hearing Examiner of a Conditional Use Permit.
- 15. An Environmental Determination of Non-Significance was issued for the pending Text Amendment, that determination was appealed by Pegi Galster, one of the appellants in this matter. That appeal was denied but is still subject to potential appeal to the City Council until June 3, 2008.
- 16. Testimony was received from other neighbors of the applicant. In addition, correspondence was received from various parties including neighbors and other residents. Some people expressed no concerns and did not appear bothered by the noise or potential noise or safety issues. Others were concerned about noise and safety.
- 17. Section 4-9-240 permits the issuance of Temporary Use Permits:

4-9-240 TEMPORARY USE PERMITS:

A. PURPOSE:

A temporary use permit allows a use or structure on a short-term basis. Such uses or structures may be allowed subject to modified development standards which would not be appropriate for permanent uses in the zoning designation.

B. APPLICABILITY:

1. Exemptions: The following uses and structures do not require a temporary use permit provided they are associated with an approved land use application and/or an active building or construction permit and approved by the Development Services Division Director.

- a. Contractor's office, storage yard, and equipment parking and servicing on or near the site or in the vicinity of an active construction project.
- b. One model home located on an existing lot, and located within the subdivision or residential development to which they pertain.
- c. Sales/marketing trailers used for the purpose of real estate sales and/or rental information, located within the subdivision or development to which they pertain.

C. USES WHICH MAY BE PERMITTED:

- 1. Occupancy of a temporary structure (existing home, mobile home or travel trailer with adequate water and sewer/septic service) on the same lot while a residential building is being constructed or while a damaged residential building is being repaired, and when a valid residential building permit is in force. The permit may be granted for up to one hundred eighty (180) days but cannot exceed the expiration date of the building permit.
- 2. Model homes, equaling the lesser of five (5) homes or twenty percent (20%) of the total lots, when located within the subdivision or residential development to which they pertain.
- 3. Circuses, carnivals, fairs, or similar transient amusement or recreational activities.
- 4. Temporary parking lots/areas.
- 5. Mobile food vendors in zones not normally permitting them.
- 6. Temporary manufactured home for medical hardship.
- 7. The Planning/Building/Public Works Administrator or designee may authorize additional temporary uses not listed in this subsection when it is found that the proposed uses are in keeping with the intent and purposes of this Section.

D. SUBMITTAL REQUIREMENTS AND APPLICATION FEES:

Shall be as listed in RMC [4-8-120C](#), Land Use Applications, and [4-1-170](#), Land Use Review Fees.

E. PUBLIC NOTICE AND COMMENT PERIOD:

Shall be as listed in RMC [4-8-090](#), Public Notice Requirements, except that public notice is not required for applications requesting a temporary manufactured home for medical hardship.

F. WAIVER OF REQUIREMENTS AND FEES:

Except for sign requirements of RMC [4-8-090](#), the Planning/Building/Public Works Administrator may waive specific application requirements determined to be unnecessary for review of an application. The Administrator may waive the permit application fee for public service activities and nonprofit organizations.

G. APPLICATION PROCESS AND REVIEW AUTHORITY:

The Planning/Building/Public Works Administrator shall, in consultation with appropriate City departments, review and decide upon each application for a temporary use permit. The Administrator may approve, modify, or condition an application for a temporary use permit.

H. DECISION CRITERIA:

The Planning/Building/Public Works Administrator or designee may approve, modify, or condition an application for a temporary use permit, based on consideration of the following factors:

1. The temporary use will not be materially detrimental to the public health, safety, or welfare, nor injurious to property or improvements in the vicinity of the temporary use; and
2. Adequate parking facilities and vehicle ingress and egress are provided to serve the temporary use and any existing uses on the site; and
3. Hours of operation of the temporary use are specified, and would not adversely impact surrounding uses; and
4. The temporary use will not cause nuisance factors such as noise, light, or glare which adversely impacts surrounding uses; and
5. If applicable, the applicant has obtained the required right-of-way use permit.

I. SPECIAL CRITERIA FOR TEMPORARY MANUFACTURED HOME FOR MEDICAL HARSHIP:

In lieu of the criteria in subsection H of this Section, a manufactured home which complies with HUD standards may be permitted as a temporary dwelling on the same lot as a permanent dwelling provided the applicant demonstrates the temporary dwelling is necessary to provide daily care to an individual certified by a physician as needing such care. The primary provider of daily care shall reside on-site; the manufactured home together with the permanent residence shall meet the setback, height, building footprint, and lot coverage provisions for the applicable zone.

J. CONDITIONS OF APPROVAL:

1. General: The Planning/Building/Public Works Administrator or designee may establish conditions as may be deemed necessary to ensure land use compatibility and to minimize potential impacts on nearby uses. These include, but are not limited to, requiring that notice be given to adjacent/abutting property owners prior to approval, time and frequency of operation, temporary arrangements for parking and traffic circulation, requirement for screening or enclosure, and guarantees for site restoration and

cleanup following temporary uses.

2. Additional Requirements – for Model Homes: In addition to the requirements of subsections J1, General, and J2, Facilities Required, of this Section, the Planning/Building/Public Works Administrator or designee may require conditions of approval regarding access/roadway construction, temporary erosion control, utilities, street and lot addressing, building permits, staking of proposed lots underlying the model homes, staking of model home lot setbacks, plat approval, abatement agreements and indemnification, and security devices for removal of model homes if plat is not recorded.

K. OTHER REQUIRED PERMITS:

The temporary use may also require permits and inspections from both the Fire Prevention Bureau and/or Development Services Division to ensure that the temporary use is in compliance with Fire/Building Codes.

L. EXPIRATION AND EXTENSION:

1. Standard Period of Validity: Except as specified in subsections L2 and L3 of this Section, a temporary use permit is valid for up to one year from the effective date of the permit, unless the Planning/Building/Public Works Administrator or designee establishes a shorter time frame.

2. Optional Extended Period of Validity: The Planning/Building/Public Works Administrator or designee may approve a longer period of up to two (2) years for temporary sales or rental offices in subdivisions, multi-family or nonresidential projects or other longer term uses, if requested by the applicant at the time of application.

3. Special Expiration/Extension Periods for Manufactured Homes for Medical Hardship: The temporary use permit for a manufactured home for medical hardship shall be effective for twelve (12) months. Extension of the temporary use permit may be approved in twelve (12) month increments subject to demonstration of continuing medical hardship. The manufactured home shall be removed within ninety (90) days of the expiration of the temporary use permit or the cessation of provision of daily care.

M. REMOVAL OF TEMPORARY USE REQUIRED:

Each site occupied by a temporary use shall be left free of debris, litter, or other evidence of the temporary use upon completion of removal of the use.

N. SECURITY:

The Planning/Building/Public Works Administrator or designee may require security in conformance with RMC [4-9-060C](#) to assure compliance with the provisions of the temporary use permit as approved if required. The amount of the security will be determined by the Planning/Building/Public Works Administrator or designee, but in no case shall it be less than one thousand dollars (\$1,000.00). The security may be used by the City to abate the use and/or facilities.

O. PERMIT REVOCATION:

1. Revocation of Temporary Use Permit: Should the Planning/Building/Public Works Administrator or the Administrator's designee determine that

information has been provided to the City which was false, incomplete, or has changed, such that the decision criteria in subsection H of this Section are incorrect, false, or have not been met, or the temporary use actually being used is different than or greater than that applied for, or if the use itself is a nuisance, unhealthy, unsafe or poses a substantial risk of harm to persons or property, then the Administrator may revoke the temporary use permit upon ten (10) days' written notice, unless an emergency exists, in which case the Administrator may declare such an emergency and immediately revoke the temporary use permit.

(Ord. 4560, 11-13-1995; Amd. Ord. 4963, 5-13-2002)

CONCLUSIONS:

1. The appellant has the burden of demonstrating that the decision of the City Official was either in error, or was otherwise contrary to law or constitutional provisions, or was arbitrary and capricious (Section 4-8-110(E)(7)(b)). The appellants have demonstrated that the action of the City should be reversed. The appeal is granted.
2. Arbitrary and capricious action have been defined as willful and unreasoning action in disregard of the facts and circumstances. A decision, when exercised honestly and upon due consideration of the facts and circumstances, is not arbitrary or capricious (*Northern Pacific Transport Co. v Washington Utilities and Transportation Commission*, 69 Wn. 2d 472, 478 (1966)).
3. An action is likewise clearly erroneous when, although there is evidence to support it, the reviewing body, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed. (*Ancheta v Daly*, 77 Wn. 2d 255, 259 (1969)). An appellant body should not necessarily substitute its judgment for the underlying agency with expertise in a matter unless appropriate.
4. Granting a Temporary Use Permit was expedient but inappropriate. It is not as if the code was silent on helicopters or helipads. Code specifically permits helipads in certain locations in the City and, by extension, excludes them from other areas. It does not appear necessary to find analogous uses, in this case, seaplane uses, and then grant a Temporary Use Permit. Similarly code specifically allows seaplanes and regular airplanes in certain areas - might the same reasoning that led to approval of this temporary use permit, allow seaplanes and regular airplanes where helicopters are permitted. The locations where each of these uses are permitted is clearly defined. Helipads are permitted solely in the IL, IM, IH, CA, CO, COR, UC-N2 Zones of the City. They are permitted as accessory to the primary use. They are further permitted in the IM zone as a standalone commercial use. But in all of these locations helipads are only permitted by Hearing Examiner Conditional Use. That means that they are subject to individual review and a public hearing.
5. Why was it necessary, therefore, to create a temporary permit for the use or, in this case, the continued use of helipads in this community? A review of the specific examples of where Temporary Uses are permitted, include model homes, circuses, carnivals, fairs or similar transient amusement, temporary parking lots, mobile food vendors and temporary housing for medical emergencies. The City latched onto the catchall provision:

"The Planning/Building/Public Works Administrator or designee may authorize additional temporary uses not listed in this subsection when it is found that the proposed uses are in keeping with the intent and purposes of this Section."

6. Does that general provision overcome the fact the Code already specifically permits helipads in certain areas but only permits them by Conditional Use Permit and only after a public hearing by the Hearing Examiner. This office does not believe that the general provision should overcome the specific criteria applied to all over helipad uses in the City. In this case, no hearing was held and the permit was issued. Of course, there is the right of appeal but that creates or changes the burden on someone who might be adversely affected, say a neighbor, by the noise, if not the safety concerns, about allowing aerial access to the upland, adjacent land.
7. The administrative approval of a Temporary Use Permit did not afford the public the same protections offered them if a helipad were being considered in many other areas of the City including the commercial zone. Even in less restrictive or perhaps less serene commercial and industrial zones, helipads are only permitted by Conditional Use Permit after a public hearing. Prior to this application no helipads were considered in a single-family residential zone. No public hearing was held. The public, while able to submit comments, did not necessarily get to express them in a public forum or rebut evidence. In addition, as an administrative decision as noted above, the public was limited in any appeal and was saddled with a greater burden of proof since the underlying approval is considered correct and not lightly overturned. These things together make approval of a helipad by issuance of the Temporary Use Permit inappropriate.
8. The approval of this temporary permit also might create an undue precedent. What other uses might be permitted by Temporary Use Permit that an applicant might desire in a single-family neighborhood? The current case would seem to suggest that establishing an otherwise impermissible use in a single family zone and then seeking a text amendment to allow that use might be grounds, after appropriate review, for issuing a Temporary Use Permit. Again, while that might be gracious or expedient the proper method for introducing new otherwise prohibited uses would be to seek the zone change first and if that is approved, establish the use. While such a procedure might have led to a more lengthy permitting process it might have resulted in a more open, public process. There does not appear to be any compelling reason to grant this permit under these circumstances. It is not as if some construction method might require a helicopter to be stationed nearby such as, for a current example, the relocation of the Puget Power lines over and near I-405.
9. The specific criteria for granting a Temporary Use Permit also provide a basis for denying the permit. The permit did not include any conditions or restrictions on use whatsoever. There were no restrictions on hours of operation or on frequency of use. There were no flight path restrictions. Their use may in fact "adversely impact surrounding uses" (Section 4090240(H)(3)) or "cause nuisance factors such as noise" (Section 4090240(H)(4)) as the Galster appellant apparently was adversely affected even if other neighbors were not. The fact that seaplanes might be located there does not change the fact that this particular use could affect a neighbor if granted under the Temporary Use Permit criteria. So while the applicant has indicated that the use would not be very intrusive since it is intermittent, infrequent and only during limited hours of the day that does not justify granting a permit that is unlike others. Again, the permit did not actually contain any restrictions. And while the permit could be revoked, that would necessitate someone complaining about a neighbor. This might not be the ideal method of determining if a use is intrusive.
10. We have testimony that some people are disturbed and others not by the noise generated by such uses. As was ascertained at the hearing (no pun intended), noise is subjective. But is it necessary under the guise of a Temporary Use Permit to allow more noise? Under the guise of this permit was it necessary to allow it next to other single-family homes? If a change in zoning was necessary, as staff clearly decided, why not wait till the text was amended and full review concluded by the City Council. Of course, allowing the use to continue did allow real world "testing" and apparently at least a few

neighbors seem to find the noise and potential safety factors an issue. One neighbor, one of the appellants, lives one lot and home removed from the helipad and finds the noise bothersome and intrusive. Other than attempting to be courteous to the underlying applicant was there any compelling reason to short circuit the Text Amendment process and allow this use by Temporary Use Permit? There were no compelling construction needs, nor medical needs to permit a use, a helipad, otherwise prohibited in the R-8 Zone by Temporary Use Permit.

11. Clearly, at this stage in the process it also appears unnecessary to have an outstanding Temporary Use Permit when the Ordinance change is in the final review stage. The Council will either adopt the proposed change or reject it.
12. The decision below should not be reversed without a clear showing that the decision is clearly erroneous or arbitrary and capricious. This office has found that the decision below was clearly erroneous and the decision below is reversed.
13. This office concludes that appellant Rosling has standing to bring an appeal. It would appear that granting a permit that allows additional noise and possibly over-flights of property within a reasonable radius around the helipad would confer standing on anyone who can claim impact. The appellant also noted in the appeal that she regularly walks by the subject site on her way to and from Coulon Park.

DECISION:

The decision is reversed and the appeal is granted.

ORDERED THIS 3rd day of June 2008.

FRED J. KAUFMAN
HEARING EXAMINER

TRANSMITTED THIS 3rd day of June 2008 to the parties of record:

(The Party of Record list is available in the City Clerk's Office)

TRANSMITTED THIS 3rd day of June 2008 to the following:

Mayor Denis Law	Dave Pargas, Fire
Jay Covington, Chief Administrative Officer	Larry Meckling, Building Official
Julia Medzegian, Council Liaison	Planning Commission
Marty Wine, Assistant CAO	Transpiration Division
Gregg Zimmerman, PBPW Administrator	Utilities Division
Alex Pietsch, Economic Development	Neil Watts, Development Services
Jennifer Henning, Development Services	Janet Conklin, Development Services
Stacy Tucker, Development Services	Renton Reporter

Pursuant to Title IV, Chapter 8, Section 100 of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., June 17, 2008.** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$75.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., June 17, 2008.**

If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.